IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1792 of 1996

For Approval and Signature:

HONOURABLE Ms. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MK CONSTRUCTION COMPANY - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR GT DAYANI with Mr. RAMNANI for Petitioner

MS MINI NAIR AGP for Respondents

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

6th August, 2007

ORAL JUDGMENT

This is a petition preferred by the Contractor against the Order dated 9th February, 1996 made by the

Gujarat Public Works Contracts Disputes Arbitration Tribunal, Ahmedabad [hereinafter referred to as, "***the Tribunal***"] on Transferred Arbitration Reference No.18 of 1995 in so far as the petitioner-contractor has been directed to pay the court-fees as per the provisions of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Rules, 1993 [hereinafter referred to as, "***the Rules***"].

The petitioner was a Government contractor. He had certain claims against the State. For resolution of the said claims, the petitioner had approached the Court of the learned Civil Judge [SD], Himatnagar under Section 20 of the Arbitration Act, 1940 for reference of the disputes to the Arbitrator. Under the prevailing rules, the petitioner had paid the Court fees of Rs.15/=. The said Special Civil Suit No. 44 of 1986 was allowed by the learned Judge. By Order dated 11th July, 1994 made by the learned Civil Judge, the disputes were referred to the sole arbitrator Shri M.H Vakharia. Feeling aggrieved by the said order, the State Government preferred First Appeal No. 843 of 1995. By Order dated 20th March, 1995 made by this Court [*Coram* : ***R.A Mehta & S.K***

Keshote, JJ.], the said Appeal was allowed. The order of the learned Civil Judge [SD], Himatnagar was *quashed* and set-aside. The matter was ordered to be transferred to the Tribunal. Pursuant to the said order, the matter was transferred to the Tribunal and was registered as Arbitration Reference No. 18 of 1995. On registration of the said reference, the Tribunal made the *impugned* order calling upon the petitioner, *inter alia*, to pay the Court fees.

Mr. Dayani has assailed the *impugned* order. He has submitted that the petitioner had filed application before the Civil Court under Section 20 of the Arbitration Act of 1940. The petitioner had paid adequate court fees. In the said application, the Civil Court had made order to refer the dispute to the sole arbitrator Shri M.H Vakharia. Now what is registered in the Tribunal is a Reference which is transferred. Once the petitioner had paid the Court fees before the Civil Court, the petitioner cannot be called upon to pay the court fees once again before the Tribunal, as that amounts to duplication of the court fees. The petitioner is, therefore, not liable

to pay the court fees again in the Tribunal. Mr. Dayani has also submitted that under the Rules, the provision is made for payment of court fees over the references made to the Tribunal. No specific provision in respect of the references which are transferred from the Civil Court or the Arbitrations which are already pending is made. In absence of any specific provision, the petitioner cannot be called upon to pay the court fees.

I am unable to agree with Mr. Dayani. Sub-section [1] of Section 20 of the Act of 1940 empowers a party to arbitration agreement to apply to the Court to refer the dispute/s for arbitration. It is admitted before me that for application made under Section 20 of the Act of 1940, the petitioner was required to pay court fees of Rs.15/=. It was in the said application that the matters at dispute were referred to the sole arbitrator which order was challenged before this Court under the direction of this Court and the suit came to be transferred to the Tribunal. Schedule to the Rules provide for payment of the court fees [50% of the *ad valorem* as mentioned

in table to schedule-I to Bombay Court Fees Act, 1946]. This necessarily means that every reference made to the Tribunal shall bear the Court fees as mentioned in the schedule – whether transferred or made straight to the Tribunal. In absence of specific exemption/exception granted/made in respect of the transferred references, the question of making any exception for such references does not arise. Besides, the contention that it amounts to duplication of Court fees is also fallacious. What lay before the Civil Court was a mere application for making reference to the Arbitrator. Once that reference was made, the application came to an end and it stood disposed of. The reference made pursuant to such order was a fresh proceeding, requiring payment of court fees in accordance with the Rules. In view of establishment of the Tribunal, the dispute was required to be referred to the Tribunal, instead to a private arbitrator. *Nevertheless*, it did not lose its character of a fresh proceeding. The court fees paid under Section 20 of the Act cannot annure in respect of the substantive reference for arbitration made to the Tribunal. The Tribunal was

wholly justified in calling upon the petitioner to pay the Court fees, as required.

In above view of the matter, the petition is *dismissed*. Rule is *discharged* with cost. The petitioner will now pay the court fees as was required to be paid on the date of the registration of the Reference before the Tribunal.

{Ms. R.M Doshit, J.}

*Prakash**